

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: : CASE NO. 10-93904-BHL-11  
EASTERN LIVESTOCK CO., LLC, : (Judge Basil H. Lorch III)  
Debtor. :  
: **OBJECTION OF THE FIRST BANK**  
: **AND TRUST COMPANY TO**  
: **TRUSTEE'S REPORT**

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Pursuant to S.D. Ind. B-9013-1(d), The First Bank and Trust Company ("First Bank"), a creditor in the above-captioned proceeding, by counsel, hereby objects to the Report of the Trustee, James A. Knauer Regarding Investigation and Analysis of Potential Claims Against Fifth Third Bank filed on June 5, 2012 [Dkt. No. 1166] ("Trustee's Report"), and in support of this Objection respectfully states:

1. Trustee's Report states it was purportedly filed "at the direction of the Court," but it was not presented, filed, or even signed by Hoover Hull LLP ("Hoover Hull"). This is a departure from the Court's orders and Hoover Hull's representations to this Court. In December of 2011, the Court directed Hoover Hull to conduct a complete investigation and to file a report regarding potential causes of action against Fifth Third Bank ("Fifth Third"), in response to questions raised by creditors regarding potential claims and the independence of the Trustee and his counsel.<sup>1</sup> After Hoover Hull filed its Motion for Enlargement of Time, the Court granted the motion, stating "**Special Counsel for the Trustee** has to and including June 5, 2012,

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<sup>1</sup>Transcript of Telephonic Hearings [Dkt. No. 931].

to file his report regarding the investigation of potential claims against Fifth Third Bank."<sup>2</sup> Also, in its Motion for Enlargement of Time, Hoover Hull stated that "**Special Counsel's Report** is due on May 31, 2012" and that "Special Counsel is working diligently to complete the Report, but needs additional time to confer with the Trustee to finalize the Report."<sup>3</sup> To date, however, Hoover Hull has submitted no written report in accordance with its Motion for Enlargement of Time, the Court's order, and in response to the objections raised by First Bank, which date back to the origin of this proceeding. Rather, the Trustee signed and submitted his own "Report" – which states it was done in conjunction with Baker & Daniels LLP (now, Faegre Baker Daniels LLP ("FBD"))<sup>4</sup> – that essentially provides conclusions no different than the Trustee had suggested in November, 2011, at the time he had already told Hoover Hull to discontinue its work months earlier.

2. The statements made in the Trustee's Report are also a departure from Hoover Hull's Preliminary Report.<sup>5</sup> In the Preliminary Report, Hoover Hull mentioned that it "determined how and when Fifth Third began suspecting that [Eastern Livestock] was conducting a complex check kite operation and at the same time misrepresenting accounts receivable and cattle inventories." Curiously, however, in **the Trustee's Report**, there is

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<sup>2</sup> Order Granting Special Counsel for the Trustee, James A. Knauer's Motion for Enlargement of Time to File Report Regarding Investigation of Potential Claims Against Fifth Third Bank ("Order Granting Motion for Enlargement of Time") [Dkt. No. 1162] (emphasis added).

<sup>3</sup> Special Counsel for the Trustee, James A. Knauer's Motion for Enlargement of Time to File Report Regarding Investigation of Potential Claims Against Fifth Third Bank ("Motion for Enlargement of Time") [Dkt. No. 1161], ¶¶ 2-3 (emphasis added).

<sup>4</sup> In January, 2011, the Trustee brought in Hoover Hull in direct response to First Bank's objection regarding the retention of FBD due to the conflict of interest in FBD's representation of Fifth Third. Accordingly, the Trustee tasked Hoover Hull with the responsibility to address all claims and defenses relating to Fifth Third.

<sup>5</sup> Preliminary Report of Special Counsel for the Trustee, James A. Knauer Regarding Investigation of Fifth Third Bank's Proof of Claim and Potential Claims Against Fifth Third Bank ("Preliminary Report") [Dkt. No. 1098].

virtually no mention of the role of Fifth Third in the investigation of the check kite, any resulting permissions or approvals, any subsequent alerts relating to similar activity in the account or even Eastern Livestock's actions in misrepresenting the accounts receivable and cattle inventories.

3. The lack of Hoover Hull's signature to the final Report and the dearth of factual analysis after weeks of "investigation" demonstrate the Trustee relegated Hoover Hull to be a passive observer, despite its charge of "investigation and prosecution of any and all claims or objections that may be asserted by the Trustee against Fifth Third, N.A. . . . or with respect to any claim that may be asserted herein by Fifth Third"<sup>6</sup> and the Order of the Court to conduct and file a complete report.<sup>7</sup>

#### **Relief Requested**

4. For the foregoing reasons, along with the reasons further set forth in Motion of The First Bank and Trust Company to Strike Trustee's Report, First Bank objects to the Trustee's Report and requests the Court to disallow and reject the Trustee's Report.

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<sup>6</sup> Application to Employ Hoover Hull LLP as Special Counsel to Chapter 11 Trustee [Dkt. No. 219], p. 1.

<sup>7</sup> Order Granting Motion for Enlargement of Time.

Respectfully submitted,

/s/ Daniel J. Donnellon

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# **CERTIFICATE OF SERVICE**

I certify that on the 20th day of June, 2012, I electronically filed the foregoing  
Objection of The First Bank and Trust Company to Trustee's Report with the Clerk of Courts  
using the CM/ECF system, which will send notification of such filing to CM/ECF participants:

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